

45 of this title in any contract subject to said sections, any interested person shall have the right of judicial review of any legal question which might otherwise be raised, including, but not limited to, wage determinations and the interpretation of the terms “locality” and “open market”.

(June 30, 1936, ch. 881, § 10, as added June 30, 1952, ch. 530, title III, § 301, 66 Stat. 308; amended Pub. L. 103-355, title VII, § 7201(2), (3), Oct. 13, 1994, 108 Stat. 3378; Pub. L. 104-106, div. D, title XLIII, § 4321(f)(2), Feb. 10, 1996, 110 Stat. 675.)

#### CODIFICATION

“Section 553 of title 5”, “subchapter II of chapter 5, and chapter 7, of title 5”, and “chapter 7 of title 5” substituted for “section 1003 of title 5”, “such Act [meaning the Administrative Procedure Act]”, and “section 1009 of title 5”, respectively, on authority of Pub. L. 89-554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

#### PRIOR PROVISIONS

A prior section 10 of act June 30, 1936, was renumbered section 12, and is classified to section 44 of this title.

#### AMENDMENTS

1996—Subsec. (b). Pub. L. 104-106, § 4321(f)(2)(A), substituted “section 35(a)” for “section 35(b)”.

Subsec. (c). Pub. L. 104-106, § 4321(f)(2)(B), struck out comma after “‘locality’”.

1994—Subsec. (b). Pub. L. 103-355, § 7201(2), substituted “supplier of materials” for “manufacturer of, or regular dealer in, materials”.

Subsec. (c). Pub. L. 103-355, § 7201(3), struck out “‘regular dealer’, ‘manufacturer’,” before “and ‘open market’”.

#### EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 251 of this title.

#### EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 251 of this title.

### § 43b. Manufacturers and regular dealers

(a) The Secretary of Labor may prescribe in regulations the standards for determining whether a contractor is a manufacturer of or a regular dealer in materials, supplies, articles, or equipment to be manufactured or used in the performance of a contract entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States, for the manufacture or furnishing of materials, supplies, articles, and equipment.

(b) Any interested person shall have the right of judicial review of any legal question regarding the interpretation of the terms “regular dealer” and “manufacturer”, as defined pursuant to subsection (a) of this section.

(June 30, 1936, ch. 881, § 11, as added Pub. L. 103-355, title VII, § 7201(4), Oct. 13, 1994, 108 Stat. 3378; amended Pub. L. 104-106, div. D, title XLIII, § 4321(f)(1)(A), Feb. 10, 1996, 110 Stat. 675.)

#### PRIOR PROVISIONS

A prior section 11 of act June 30, 1936, was renumbered section 12, and is classified to section 44 of this title.

Another prior section 11 of act June 30, 1936, was renumbered section 13, and is classified to section 45 of this title.

#### AMENDMENTS

1996—Pub. L. 104-106 transferred section in original so as to appear after section 43a of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 251 of this title.

#### EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 251 of this title.

### § 44. Separability of Walsh-Healey provisions

If any provision of sections 35 to 45 of this title, or the application thereof to any persons or circumstances, is held invalid, the remainder of said sections, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

(June 30, 1936, ch. 881, § 12, formerly § 10, 49 Stat. 2039; renumbered § 11, June 30, 1952, ch. 530, title III, § 301, 66 Stat. 308; renumbered § 12, Pub. L. 104-106, div. D, title XLIII, § 4321(f)(1)(B), Feb. 10, 1996, 110 Stat. 675.)

#### PRIOR PROVISIONS

A prior section 12 of act June 30, 1936, was renumbered section 13, and is classified to section 45 of this title.

Another prior section 12 of act June 30, 1936, was renumbered section 14, and is set out as a Short Title note under section 35 of this title.

### § 45. Effective date of Walsh-Healey provisions; exception as to representations with respect to minimum wages

Sections 35 to 45 of this title shall apply to all contracts entered into pursuant to invitations for bids issued on or after ninety days from June 30, 1936: *Provided, however,* That the provisions requiring the inclusion of representations with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor.

(June 30, 1936, ch. 881, § 13, formerly § 11, 49 Stat. 2039; renumbered § 12, June 30, 1952, ch. 530, title III, § 301, 66 Stat. 308; renumbered § 13, Pub. L. 104-106, div. D, title XLIII, § 4321(f)(1)(B), Feb. 10, 1996, 110 Stat. 675.)

### § 46. Committee for Purchase From People Who Are Blind or Severely Disabled

#### (a) Establishment

There is established a committee to be known as the Committee for Purchase From People Who Are Blind or Severely Disabled (hereafter in sections 46 to 48c of this title referred to as the “Committee”). The Committee shall be composed of fifteen members appointed as follows:

(1) The President shall appoint as a member one officer or employee from each of the following: The Department of Agriculture, the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the Department of Education, the Department of Commerce, the Department of Veterans Affairs, the Department of Justice, the Department of Labor, and the General Services Administration. The head of each such department and agency shall nominate one officer or employee in his department or agency for appointment under this paragraph.

(2)(A) The President shall appoint one member from persons who are not officers or employees of the Government and who are conversant with the problems incident to the employment of the blind.

(B) The President shall appoint one member from persons who are not officers or employees of the Government and who are conversant with the problems incident to the employment of other severely handicapped individuals.

(C) The President shall appoint one member from persons who are not officers or employees of the Government and who represent blind individuals employed in qualified nonprofit agencies for the blind.

(D) The President shall appoint one member from persons who are not officers or employees of the Government and who represent severely handicapped individuals (other than blind individuals) employed in qualified nonprofit agencies for other severely handicapped individuals.

#### **(b) Vacancy**

A vacancy in the membership of the Committee shall be filled in the manner in which the original appointment was made.

#### **(c) Chairman**

The members of the Committee shall elect one of their number to be Chairman.

#### **(d) Terms**

(1) Except as provided in paragraphs (2), (3), and (4), members appointed under paragraph (2) of subsection (a) of this section shall be appointed for terms of five years. Any member appointed to the Committee under such paragraph may be reappointed to the Committee if he meets the qualifications prescribed by that paragraph.

(2) Of the members first appointed under paragraph (2) of subsection (a) of this section—

(A) one shall be appointed for a term of three years,

(B) one shall be appointed for a term of four years, and

(C) one shall be appointed for a term of five years,

as designated by the President at the time of appointment.

(3) Any member appointed under paragraph (2) of subsection (a) of this section to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member appointed under such paragraph may serve after the expiration of his term until his successor has taken office.

(4) The member first appointed under paragraph (2)(B) of subsection (a) of this section shall be appointed for a term of three years.

#### **(e) Pay and travel expenses**

(1) Except as provided in paragraph (2), members of the Committee shall each be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including travel-time) during which they are engaged in the actual performance of services for the Committee.

(2) Members of the Committee who are officers or employees of the Government shall receive no additional pay on account of their service on the Committee.

(3) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b)<sup>1</sup> of title 5.

#### **(f) Staff**

(1) Subject to such rules as may be adopted by the Committee, the Chairman may appoint and fix the pay of such personnel as the Committee determines are necessary to assist it in carrying out its duties and powers under sections 46 to 48c of this title.

(2) Upon request of the Committee, the head of any entity of the Government is authorized to detail, on a reimbursable basis, any of the personnel of such entity to the Committee to assist it in carrying out its duties and powers under section 46 to 48c of this title.

(3) The staff of the Committee appointed under paragraph (1) shall be appointed subject to the provisions of title 5 governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title 5 relating to classification and General Schedule pay rates.

#### **(g) Obtaining official data**

The Committee may secure directly from any entity of the Government information necessary to enable it to carry out sections 46 to 48c of this title. Upon request of the Chairman of the Committee, the head of such Government entity shall furnish such information to the Committee.

#### **(h) Administrative support services**

The Administrator of General Services shall provide to the Committee on a reimbursable basis such administrative support services as the Committee may request.

#### **(i) Annual report**

The Committee shall, not later than December 31 of each year, transmit to the President and to the Congress a report which shall include the names of the Committee members serving in the preceding fiscal year, the dates of Committee meetings in that year, a description of its activities under sections 46 to 48c of this title in that year, and any recommendations for changes in sections 46 to 48c of this title which it determines are necessary.

(June 25, 1938, ch. 697, § 1, 52 Stat. 1196; Pub. L. 92-28, § 1, June 23, 1971, 85 Stat. 77; Pub. L. 93-358,

<sup>1</sup> See References in Text note below.

§1(1), (2), July 25, 1974, 88 Stat. 392, 393; Pub. L. 94-273, §8(2), Apr. 21, 1976, 90 Stat. 378; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 102-54, §13(p), June 13, 1991, 105 Stat. 278; Pub. L. 102-569, title IX, §911(a), Oct. 29, 1992, 106 Stat. 4486; Pub. L. 103-73, title III, §301, Aug. 11, 1993, 107 Stat. 736.)

## REFERENCES IN TEXT

Section 5703 of title 5, referred to in subsec. (e)(3), was amended generally by Pub. L. 94-22, §4, May 19, 1975, 89 Stat. 85, and, as so amended, does not contain a subsec. (b).

## AMENDMENTS

1993—Subsec. (a). Pub. L. 103-73 substituted “Blind or Severely Disabled” for “Blind and Severely Disabled” in introductory provisions.

1992—Subsec. (a). Pub. L. 102-569 substituted “From People Who Are Blind and Severely Disabled” for “from the Blind and Other Severely Handicapped” in introductory provisions.

1991—Subsec. (a)(1). Pub. L. 102-54 substituted “Department of Veterans Affairs” for “Veterans’ Administration”.

1976—Subsec. (i). Pub. L. 94-273 substituted “December 31” for “September 30”.

1974—Subsec. (a). Pub. L. 93-358, §1(1)(A), (B), substituted “Committee for Purchase from Blind and Other Severely Handicapped” for “Committee for Purchase of Products and Services of the Blind and Other Severely Handicapped” and “fifteen” for “fourteen” in provisions preceding par. (1).

Subsec. (a)(2). Pub. L. 93-358, §1(1)(C), (D), struck out “and other severely handicapped individuals” after “employment of the blind” in subpar. (A), added subpar. (B), and redesignated former subpars. (B) and (C) as (C) and (D), respectively.

Subsec. (d)(1). Pub. L. 93-358, §1(2)(A), substituted “paragraphs (2), (3), and (4)” for “paragraphs (2) and (3)”.

Subsec. (d)(4). Pub. L. 93-358, §1(2)(B), added par. (4).  
1971—Pub. L. 92-28, in substituting subsecs. (a) to (i) for former paragraph, among other changes: renamed Committee on Purchases of Blind-made Products as Committee for Purchase of Products and Services of the Blind and Other Severely Handicapped; increased membership of Committee from seven to fourteen members; provided for appointments from Departments of Defense, Air Force, Health, Education, and Welfare, Justice, and Labor and from Veterans’ Administration and General Services Administration; eliminated appointments from Treasury Department and Department of Interior; substituted appointment from Department of the Army for appointment from War Department; required one appointee to be also conversant with problems incident to employment of other severely handicapped individuals; substituted requirement that such appointment be from persons not officers or employees of the Government rather than that he be a private citizen; reenacted provision for Presidential appointment; substituted subsec. (e) pay and travel expenses provisions for former requirement for service of Committee members without additional compensation; incorporated in subsec. (c) provision for selection of a Chairman, substituting “election” for “designation”; and inserted provisions incorporated in subsecs. (a)(1) (for nomination by head of each department and agency of one officer or employee of the department or agency for appointment under par. (1)), (a)(2)(B), (C), (b), (d), and (f) to (i).

## EFFECTIVE DATE OF 1971 AMENDMENT

Section 2 of Pub. L. 92-28 provided that: “The amendment made by the first section of this Act [amending this section and sections 47 and 48 and enacting sections 48a to 48c of this title] shall take effect on the first day of the first month which begins more than

thirty days after the date of enactment of this Act [June 23, 1971].”

## SHORT TITLE

Section 7 of act June 25, 1938, as added by Pub. L. 103-355, title X, §10005(f)(6), Oct. 13, 1994, 108 Stat. 3409, provided that: “This Act [enacting this section and sections 47 to 48c of this title] may be cited as the ‘Javits-Wagner-O’Day Act’.”

## TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (i) of this section relating to the requirement that the Committee transmit a report to Congress each year, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 199 of House Document No. 103-7.

## REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

## TRANSFER OF FUNCTIONS

“Department of Education” substituted for “Department of Health, Education, and Welfare” in subsec. (a)(1) pursuant to sections 301(a)(4)(A), (C), (b)(3) and 507 of Pub. L. 96-88, which are classified to sections 3441(a)(4)(A), (C), (b)(3) and 3507 of Title 20, Education, and which transferred to the Department of Education the functions and offices of the Department of Health, Education, and Welfare that had the major governmental function in the field of vocational rehabilitation for the blind and other severely handicapped and administered related vocational rehabilitation programs for individuals with disabilities.

## CONTRACTING WITH EMPLOYERS OF PERSONS WITH DISABILITIES

Pub. L. 109-364, div. A, title VIII, §856(a), (d), Oct. 17, 2006, 120 Stat. 2347, 2349, provided that:

“(a) INAPPLICABILITY OF CERTAIN LAWS.—

“(1) INAPPLICABILITY OF THE RANDOLPH-SHEPPARD ACT TO CONTRACTS AND SUBCONTRACTS FOR MILITARY DINING FACILITY SUPPORT SERVICES COVERED BY JAVITS-WAGNER-O’DAY ACT.—The Randolph-Sheppard Act (20 U.S.C. 107 et seq.) does not apply to full food services, mess attendant services, or services supporting the operation of a military dining facility that, as of the date of the enactment of this Act [Oct. 17, 2006], were services on the procurement list established under section 2 of the Javits-Wagner-O’Day Act (41 U.S.C. 47).

“(2) INAPPLICABILITY OF THE JAVITS-WAGNER-O’DAY ACT TO CONTRACTS FOR THE OPERATION OF A MILITARY DINING FACILITY.—(A) The Javits-Wagner-O’Day Act (41 U.S.C. 46 et seq.) does not apply at the prime contract level to any contract entered into by the Department of Defense as of the date of the enactment of this Act [Oct. 17, 2006] with a State licensing agency under the Randolph-Sheppard Act (20 U.S.C. 107 et seq.) for the operation of a military dining facility.

“(B) The Javits-Wagner-O’Day Act shall apply to any subcontract entered into by a Department of Defense contractor for full food services, mess attendant services, and other services supporting the operation of a military dining facility.

“(3) REPEAL OF SUPERSEDED LAW.—[Repealed section 853(a), (b) of Pub. L. 108-375, 118 Stat. 2021.]

“(d) DEFINITIONS.—In this section:

“(1) The term ‘State licensing agency’ means any agency designated by the Secretary of Education under section 2(a)(5) of the Randolph-Sheppard Act (20 U.S.C. 107a(a)(5)).

“(2) The term ‘military dining facility’ means a facility owned, operated, leased, or wholly controlled by the Department of Defense and used to provide dining services to members of the Armed Forces, including a cafeteria, military mess hall, military troop dining facility, or any similar dining facility operated for the purpose of providing meals to members of the Armed Forces.”

STATEMENT OF POLICY AND REPORT CONCERNING THE OPERATION AND MANAGEMENT OF CERTAIN MILITARY FACILITIES REGARDING THE BLIND OR SEVERELY DISABLED

Pub. L. 109-163, div. A, title VIII, §848(b), (c), Jan. 6, 2006, 119 Stat. 3395, provided that:

“(b) STATEMENT OF POLICY.—The Secretary of Defense, the Secretary of Education, and the Chairman of the Committee for Purchase From People Who Are Blind or Severely Disabled shall jointly issue a statement of policy related to the implementation of the Randolph-Sheppard Act (20 U.S.C. 107 et seq.) and the Javits-Wagner-O’Day Act (41 U.S.C. 48 [46 et seq.]) within the Department of Defense and the Department of Education. The joint statement of policy shall specifically address the application of those Acts to both operation and management of all or any part of a military mess hall, military troop dining facility, or any similar dining facility operated for the purpose of providing meals to members of the Armed Forces, and shall take into account and address, to the extent practicable, the positions acceptable to persons representing programs implemented under each Act.

“(c) REPORT.—Not later than April 1, 2006, the Secretary of Defense, the Secretary of Education, and the Chairman of the Committee for Purchase From People Who Are Blind or Severely Disabled shall submit to the Committees on Armed Services of the Senate and the House of Representatives, the Committee on Health, Education, Labor and Pensions of the Senate, and the Committee on Education and the Workforce of the House of Representatives a report describing the joint statement of policy issued under subsection (b), with such findings and recommendations as the Secretaries consider appropriate.”

**§ 47. Duties and powers of the Committee**

**(a) Procurement list: publication in Federal Register; additions and removals**

(1) The Committee shall establish and publish in the Federal Register a list (hereafter in sections 46 to 48c of this title referred to as the “procurement list”) of—

(A) the commodities produced by any qualified nonprofit agency for the blind or by any qualified nonprofit agency for other severely handicapped, and

(B) the services provided by any such agency,

which the Committee determines are suitable for procurement by the Government pursuant to sections 46 to 48c of this title. Such list shall be established and published in the Federal Register before the expiration of the thirty-day period beginning on Aug. 1, 1971, and shall initially consist of the commodities contained, on such date, in the schedule of blind-made products issued by the former Committee on Purchases of Blind-Made Products under its regulations.

(2) The Committee may, by rule made in accordance with the requirements of subsections (b), (c), (d), and (e) of section 553 of title 5, add to and remove from the procurement list commodities so produced and services so provided.

**(b) Fair market price; price revisions**

The Committee shall determine the fair market price of commodities and services which are

contained on the procurement list and which are offered for sale to the Government by any qualified nonprofit agency for the blind or any such agency for other severely handicapped. The Committee shall also revise from time to time in accordance with changing market conditions its price determinations with respect to such commodities and services.

**(c) Central nonprofit agency; designation**

The Committee shall designate a central nonprofit agency or agencies to facilitate the distribution (by direct allocation, subcontract, or any other means) of orders of the Government for commodities and services on the procurement list among qualified nonprofit agencies for the blind or such agencies for other severely handicapped.

**(d) Rules and regulations; blind-made products, priority**

(1) The Committee may make rules and regulations regarding (A) specifications for commodities and services on the procurement list, (B) the time of their delivery, and (C) such other matters as may be necessary to carry out the purposes of sections 46 to 48c of this title.

(2) The Committee shall prescribe regulations providing that—

(A) in the purchase by the Government of commodities produced and offered for sale by qualified nonprofit agencies for the blind or such agencies for other severely handicapped, priority shall be accorded to commodities produced and offered for sale by qualified nonprofit agencies for the blind, and

(B) in the purchase by the Government of services offered by nonprofit agencies for the blind or such agencies for other severely handicapped, priority shall, until the end of the calendar year ending December 31, 1976, be accorded to services offered for sale by qualified nonprofit agencies for the blind.

**(e) Problems and production methods; study and evaluation**

The Committee shall make a continuing study and evaluation of its activities under sections 46 to 48c of this title for the purpose of assuring effective and efficient administration of sections 46 to 48c of this title. The Committee may study (on its own or in cooperation with other public or nonprofit private agencies) (1) problems related to the employment of the blind and of other severely handicapped individuals, and (2) the development and adaptation of production methods which would enable a greater utilization of the blind and other severely handicapped individuals.

(June 25, 1938, ch. 697, §2, 52 Stat. 1196; Pub. L. 92-28, §1, June 23, 1971, 85 Stat. 79.)

AMENDMENTS

1971—Pub. L. 92-28, in substituting subsecs. (a) to (e) for former paragraph, among other changes: extended provisions to cover commodities and services of agencies for the blind and other severely handicapped, previously limited to brooms and mops and other suitable commodities manufactured by agencies for the blind; inserted provisions incorporated in subsecs. (a) and (e); incorporated in subsec. (b) provisions for determination of fair market price and price revisions; incorporated in subsec. (c) provisions for designation of a central non-